7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The NCUA Board is amending its chartering and field of membership manual to update chartering policies and further streamline the select group application process. These amendments result from NCUA's experience addressing field of membership issues and concerns that surfaced after the adoption of the current chartering and field of membership policies.

EFFECTIVE DATE: November 27, 2000.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

FOR FURTHER INFORMATION CONTACT: J. Leonard Skiles, Chairman, Field of Membership Task Force, 4807 Spicewood Springs Road, Suite 5200, Austin, Texas 78759 or telephone (512) 231-7900; Michael J. McKenna, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518-6540; Lynn K. McLaughlin, Program Officer, Office of Examination and Insurance, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518-6360.

A. SUPPLEMENTARY INFORMATION:

In 1998, Congress revised the laws on field of membership with the passage of the Credit Union Membership Access Act ("CUMAA"). On August 31, 1998, the NCUA Board issued a proposed rule updating NCUA's chartering and field of membership policies. 62 FR 49164 (September 14, 1998). On December 17, 1998, the NCUA Board issued a final rule with an effective date of January 1, 1999. When the NCUA Board issued its final rule it instructed the Field of Membership Taskforce to coordinate and monitor implementation of the new chartering policies and make necessary recommendations for policy clarifications and amendments to IRPS 99-1.

Over the past twenty-two months, NCUA's Field of Membership Taskforce has monitored and reviewed the implementation of IRPS 99-1 in an effort to improve consistency and provide a basis, if necessary, for further clarifications and modifications. As a result of this continued oversight, the Field of Membership

Taskforce made a number of recommendations to clarify and update field of membership policies and address the issues that arose during the oversight period.

On June 6, 2000, the NCUA Board issued proposed amendments to its chartering and field of membership policies with a sixty-day comment period. 65 FR 37065 (June 13, 2000). The comment period ended on August 14, 2000.

Four hundred and forty-nine comments were received. Comments were received from two hundred and eighty-seven federal credit unions, one hundred and seventeen state chartered credit unions, one United States Senator, four United States Congressmen, twenty-one state leagues, six national credit union trade associations, two bank trade associations, two state representatives, one shared service cooperative, one technical support specialist, and seven credit union members.

Generally, with the exception of the proposed addition of a community action plan requirement (CAP) for community chartered credit unions, most commenters were supportive of the proposed revisions to NCUA's chartering policies. As a result of those comments, a number of modifications to the proposed rule have been incorporated into the final rule. An overwhelming majority of the commenters concentrated on the CAP provision and recommended that it be deleted. The final rule, while not deleting the CAP concept, has been modified from the proposed rule.

B. FINAL AMENDMENTS

1. OCCUPATIONAL COMMON BOND

The NCUA Board proposed to amend the language in the section on occupational common bonds so that in situations where multiple contractors who qualify based on a strong dependency relationship are sole proprietors (for example, there may be hundreds of independent drivers for a particular taxi company), the regional director may use generalized wording in the credit union's charter. Seven commenters agreed with this proposed change. One commenter opposed the change. One commenter stated the more generalized language should be used in all cases of sole proprietors. The NCUA Board believes that the regions will, in most cases, use the generalized wording for most sole proprietors, but there may be cases when the generalized wording would not be appropriate. Therefore, the final rule incorporates the amendment as proposed.

2. ASSOCIATIONAL COMMON BOND

Students Groups. The NCUA Board believes that students are a unique group that can be considered either occupational or associational depending on the circumstances. A student group, by itself or when combined with school employees, can be or constitute part of an occupational common bond. Similarly, when part of a faith-based group, the student group can be treated as part of an associational common bond. Therefore the NCUA Board proposed to amend Chapter 2, Section III A.1. of IRPS 99-1 to reflect this view. Nine commenters agreed with this change. One

commenter believes this proposal is too expansive. For the reasons stated in the proposed rule, the NCUA Board is adopting the amendment as proposed.

Two commenters stated that alumni of a school should not have to join the alumni association before being eligible for credit union service. The Board does not agree. Eligibility for credit union membership based on an alumni associational common bond requires that an alumnus be a member of the association. Additionally, the alumni association must meet the requirements of an association. Those requirements include consideration of the payment of dues, voting rights, sponsored activities, etc. These commenters also stated that, in some cases, alumni of a college or a university were automatically members of their alumni association and, in some cases, alumni associations do not charge dues to belong to the alumni association. To clarify current policy, if an alumnus is automatically a member of the alumni association as a result of graduation, and there are no other membership requirements, then the membership requirement is satisfied provided the other indicia of membership in an association are met. Graduates of a college or university would not be a legitimate associational common bond.

One commenter stated that Chapter 2, Section IV.A.1 should be amended to demonstrate that a multiple common bond credit union can add students as either an associational group or occupational group. The Board believes that since this is addressed in both the occupational and associational sections, this revision is not necessary.

3. MULTIPLE COMMON BOND CREDIT UNIONS

EXPEDITED PROCESS FOR GROUPS OF 500 OR LESS. In the chartering process, as well as the addition of select groups to a multiple common bond credit union, economic advisability is critically important. It is the responsibility of NCUA to ensure that if a credit union is chartered, it has, at a minimum, a reasonable opportunity to succeed in today's financial marketplace.

In addressing these responsibilities in relation to the historical data related to chartering new credit unions, the NCUA Board established an expedited process in IRPS 99-1 for groups of 200 or less primary potential members. Although a written determination regarding the various statutory criteria was still required, the expedited process allowed for the streamlined processing of groups of 200 or less since the Board found that such groups, in almost all cases, would not be economically viable. Thus, in the past 21 months, applicant credit unions applying to add a group of 200 or less simply had to complete the Form 4015-EZ. Additionally, no overlap analysis was required for these small groups.

Based on the historical experience since the promulgation of IRPS 99-1, plus other chartering data since 1990, the NCUA Board proposed to raise the expedited processing number for adding groups to 500. In conjunction with this proposal, the

NCUA Board also proposed raising the number of members in a group requiring an overlap analysis from 200 to 500.

Two commenters opposed increasing the expedited processing number to 500. Fourteen commenters agreed with the proposed amendment that the expedited processing number for adding select groups should be increased to 500, and that no overlap analysis should be required of groups of 500 or less. Eleven commenters recommended raising the expedited processing number above 500. Of those eleven commenters, one commenter suggested increasing the threshold to 1,000, one to 1,500, two to 2,000, and seven commenters suggested raising the number to 3,000.

The NCUA Board believes that historical experience and other data support raising the number to 500. The Board will consider a further increase to the expedited processing number when more historical data is accumulated. If subsequent evidence demonstrates a higher number is justified, the Board will revisit the issue. The Board is also restating its position that desire and initiative to form a credit union are critical factors in evaluating economic advisability.

One commenter asked if a credit union could appeal an overlap when a group in its field of membership is added to another credit union. A credit union can appeal any decision by the regional director, but an overlapped credit union is not provided written notification and appeal rights.

ADEQUATE CAPITALIZATION FOR MULTIPLE COMMON BOND CREDIT UNION EXPANSIONS. One of the statutory requirements for the addition of a select group to a multiple common bond credit union is that the credit union be adequately capitalized. However, the statute did not define adequate capitalization. Consequently, the Board stated in IRPS 99-1 that six percent capitalization for a credit union in existence more than 10 years should be considered adequate for field of membership expansion purposes. Since the adoption of that standard, the NCUA Board has come to believe that for reasons totally outside the control of the credit union, such as sponsor problems, temporary asset fluctuations or economic downturns, a credit union may temporarily drop below or not be able to achieve or sustain a six percent capitalization level. Therefore, the NCUA Board proposed giving the regional director latitude to determine that any credit union with less than six percent net worth is adequately capitalized for field of membership purposes if the credit union is making reasonable progress toward meeting the requirement.

Twelve commenters agreed with providing the regional director with this discretionary authority, although one of these commenters would reduce the number to five percent. One commenter believes that the regional director should not have discretionary authority and that a minimum level of capital should be maintained. Two commenters suggested that all expanding credit unions should maintain a six percent capitalization level. One commenter opposed this policy change. The NCUA Board is adopting the proposed amendment in the final rule. The NCUA Board was provided no compelling

rationale for lowering the standard for adequately capitalized or for not providing the regional director with this discretionary authority.

REASONABLE PROXIMITY FOR SELECT GROUP EXPANSIONS. Since the adoption of IRPS 99-1, an issue has been raised regarding the policies affecting the addition of groups that are within reasonable proximity of a service facility (this term includes a service center, branch or shared branch or any offsite credit union location that meets the definition of a service facility.) In defining reasonable proximity, the NCUA Board stated in IRPS 99-1 that the group to be added must be within the "service area" of a "service facility" of the credit union. Service facility was defined to mean a place where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed. This definition included a credit union owned branch, a shared branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition did not include an ATM. Most importantly, the Board articulated the position that in order to expand around a service facility, the credit union must have ownership in the service facility, but the degree of ownership was not defined. Participation in a service facility, without ownership, was not an allowable basis for adding a select group and otherwise satisfy the requirement of the statute that the credit union must be within reasonable proximity to the location of the group.

In reviewing this issue, the Board determined that the current policy was overly restrictive and that the threshold for allowing the addition of groups around a service facility should be modified. The proposed amendment would provide greater flexibility to credit unions to add select groups around service facilities if either (1) the credit union owns directly or through a CUSO or similar organization, at least a 5 percent interest in the service facility or (2) the service facility is local to the credit union and the credit union is an authorized participant in the service center.

A total of twenty-six commenters addressed this issue, most of whom recommended greater flexibility than that proposed. Five commenters approved of the expansion requirements for shared branches. Two commenters stated that any ownership interest should be sufficient. One commenter stated that a five percent ownership interest is too high. Three commenters stated that NCUA should not allow expansions around shared service centers.

Nine commenters stated that shared branches should be treated like any other credit union branch for expansion purposes, without any requirement of ownership interest or that it be local. Two commenters suggested that instead of a specific ownership amount, the agency should define ownership as that which conveys or allows a voting right in the partnership, corporation or organization, regardless of its size relative to other owners. These commenters stated that a voting right demonstrates the ability of the credit union to participate in the direction of the partnership, corporation or organization and should resolve NCUA's concern as to ownership and its relationship to FOM expansions. Many of the commenters who opposed the ownership interest requirement believed that the proposal would hurt small credit unions.

Three commenters stated that NCUA should give a regional director discretionary authority concerning the five percent limitation, with one of these commenters providing the following test for an expansion: 1) the circumstances are such that less than a five percent ownership level is achieved because the number of owners makes it difficult or impossible to own more than five percent; or 2) the applicant credit union is serving at least one group of greater than 500 potential members within a reasonable proximity of the shared facility. One commenter believed NCUA should consider items other than ownership including the availability of other credit union services, the location of other select groups presently in the credit union's field of membership, the presence of branch offices or other locations of existing select groups, and the usage statistics of shared branches by current members of the requesting credit union.

The Board notes that the Federal Credit Union Act clearly states that if the formation of a separate credit union is not practicable or consistent with the standards set forth in the statute, then a select group can be included in the "field of membership of a credit union that is within reasonable proximity to the location of the group." The statutory standard, therefore, is that if the group cannot form a credit union, then it can be added to the field of membership of another credit union if it is reasonably proximate to the expanding credit union. In addressing this issue, therefore, it is necessary to determine what is meant by credit union and reasonable proximity.

The second of these two issues is easily addressed. NCUA has consistently held that the group being added must be within the expanding credit union's geographic service area. The House Committee Report for CUMAA addressed the reasonable proximity requirement and offered valuable guidance on how NCUA ultimately viewed the statutory language. H.R. Rep. No. 104-472, 105th Cong., 2nd Sess. 19 (1998). On page 20 of the Report it is stated that the statute "articulates a strong policy towards placing groups which cannot form their own credit unions with a ***local*** credit union." (Emphasis added.)

The definition of a credit union, therefore, is crucial to determining how flexible NCUA can be in allowing expansions around service facilities. Can it be reasonably determined that a service facility constitutes a credit union in the context of the statute, if the expanding credit union has little or no ownership interest in the service facility? In other words, can a credit union that is simply linked to the service facility through a state or national network use that linkage, without ownership, to expand its field of membership by adding groups within the service area of the service facility?

Prior to CUMAA, NCUA's policy did not permit the addition of select groups around shared branches. Additionally, a branch could not be established without an existing membership base. With the passage of CUMAA and the adoption of IRPS 99-1, the only change in this policy was that a credit union could establish a branch office in any location regardless of membership location. This policy allowed greater expansion opportunities, but it required a capital commitment.

The proposed amendment would allow greater flexibility for credit unions to add new groups, but it would not permit credit unions that are simply linked to a service facility through a state or national network use that linkage, without ownership, to expand by adding select groups located within the service area of those service facilities? It is the Board's view that a service facility is not a credit union for the purposes of field of membership expansion unless the credit union has an ownership interest in that service facility, or the service facility is otherwise local to the credit union and already serves an existing membership base.

The question then becomes, what degree of ownership interest is appropriate? A number of commenters suggested various levels of ownership interest or alternatives to ownership, such as voting rights; however, the Board continues to believe that a 5 percent level of ownership interest is reasonable and satisfies the intent of the statute. It is important to note that this interpretation does not limit service to members through a service facility not owned by a credit union. It simply prescribes certain ownership requirements that must be met before a credit union can expand around a service facility.

The amendment, as proposed, is adopted in the final rule.

MULTIPLE COMMON BOND DOCUMENTATION REQUIREMENTS. Since the implementation of IRPS 99-1, a number of questions and issues have been raised related to the documentation requirements that must be satisfied before adding select groups. To clarify this issue, the NCUA Board proposed adding language to Chapter II, IV.B.3 as follows:

> Why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards. Some of the areas the credit union may consider include:
>
> - Member location - whether the membership is widely dispersed or concentrated in a central location.
>
> - Demographics - the employee turnover rate, economic status of the group's members, and whether the group is more apt to consist of savers and/or borrowers.
>
> - Market competition - the availability of other financial services.
>
> - Desired services and products – the type of services the group desires in comparison to the type of services a new credit union could offer.
>
> - Sponsor subsidies - the availability of operating subsidies.
>
> - Employee interest - the extent of the employees' interest in obtaining a credit union charter.

- Evidence of past failure - whether the group previously had its own credit union or previously filed for a credit union charter.

- Administrative capacity to provide services - will the group have the management expertise to provide the services requested.

Eight commenters approved of adding the clarifying language for why it may not be practical for a group to form its own credit union. Five commenters suggested that the desire of the sponsor should be added to the list. The NCUA Board agrees with this suggestion and has added the desire of the sponsor as a factor to be considered in determining why a group may not wish to form its own credit union.

One commenter stated that the "availability of other financial services" is not relevant and recommended deleting it from the list of factors to be considered. This commenter would also delete "the availability of operating subsidies," and suggested consideration of operating subsidies may discourage potential sponsors. The NCUA Board disagrees with these comments and believes both factors could be important in determining economic viability.

Two commenters recommended that NCUA not contact the group when trying to determine economic advisability. Although direct contact with a group seeking credit union service is infrequent, occasionally it is necessary in order to obtain additional information in support of the request. Most often the direct contact is related to obtaining more documentation on economic advisability criteria or obtaining clarification on assertions made by the group. Generally, directly contacting a group that has submitted incomplete information has expedited the field of membership expansion request. As a result, NCUA reserves the right to contact the group when additional information is needed to process an application.

Two commenters stated that the manual should specifically state, as the preamble did, that a "credit union need not address every item on the list, simply those issues that are relevant to its particular request." The NCUA Board agrees with this suggestion since it will provide clarification and has incorporated it into the final rule.

Two commenters stated that the economic advisability list should state that widely dispersed groups do not meet the criteria for the formation of a separate credit union. The NCUA Board does not agree with these commenters. Although rare, widely dispersed members of groups may still have the ability to form their own credit union; however, it is recognized that membership dispersion is a critical consideration in determining economic advisability.

VOLUNTARY MERGERS. Consistent with current policy, two single common bond credit unions that share the same common bond (same field of membership) can voluntarily merge. For example, corporation A is nationally based. As a result of being nationally based, it has several credit unions that are not geographically restricted

serving its employees. These single common bond credit unions share the same common bond and field of membership. Accordingly, by policy, no analysis of the groups are required to determine if they can stand on their own and the credit unions can voluntarily merge.

Similarly, if corporation A is served by a single common bond credit union and corporation B is served by a single common bond credit union, the two single common bond credit unions can merge if one corporation is acquired by the other. In other words, if corporation A purchases corporation B, then the two single common bond credit unions share the same common bond and there is no restriction on the two credit unions voluntarily merging. Again, no field of membership analysis is required, other than to determine they share the same common bond.

The two situations described above have not presented a problem this past year. However, in the examples provided above, if one of the credit unions is a healthy multiple common bond credit union, the result can be entirely different. In some cases, this places an undue burden on the credit unions and often presents potential long-term supervisory concerns. To illustrate, if in the second example the credit union serving corporation B is a multiple common bond credit union, and corporation A purchases corporation B, under current policy, if the primary field of membership in corporation B's credit union has more than 3,000 primary potential members and every other group has less than 3,000 primary potential members, then NCUA still must analyze each group of 3,000 or more potential members to determine whether the formation of a separate credit union is practical. This is a harsh result when both credit unions essentially share the same common bond.

The NCUA Board believes that if two credit unions have a substantial overlap of their fields of membership, then the two credit unions should be allowed to voluntarily merge without analyzing that group's ability to form its own credit union.

Therefore, the NCUA Board proposed a modification to its merger policy to permit the voluntary merger of credit unions with fields of membership that substantially overlap. That is, if two or more credit unions share the same primary fields of membership, and each of the remaining select groups have primary potential members less than 3,000, then the remaining groups will be considered incidental and the credit unions should be allowed to merge.

Eleven commenters approved of the change to the voluntary merger section. Two of these commenters suggested that NCUA consider expanding this interpretation to also allow voluntary mergers of credit unions sharing similar fields of membership without an intervening corporate event. The NCUA Board agrees, but believes that the proposed revision reflects this position; therefore, no additional change is necessary.

Two commenters opposed the change in policy. Three commenters stated that even this proposed voluntary merger policy is overly restrictive. One commenter stated that NCUA should approve voluntary mergers with little or no restrictions in the case of

corporate acquisitions or restructuring. Six commenters, notwithstanding the law, stated that any voluntary merger should be permitted. For the reasons cited above, the NCUA Board is changing its voluntary merger policy. However, unrestricted voluntary mergers of multiple common bond credit unions cannot be permitted due to the statutory restrictions contained in CUMAA.

SUPERVISORY MERGERS. When safety and soundness concerns are present, NCUA may approve the merger of any federally insured credit union. The NCUA Board proposed to amend Chapter II, Section IV.D.2 of the Chartering Manual to clarify that abandonment by the management and/or officials and an inability to find replacements, loss of sponsor support, serious and persistent record keeping problems, sustained material decline in financial condition, or other serious or persistent circumstances are examples that may constitute grounds for merging a credit union due to supervisory concerns. These are just examples and not an all-inclusive list.

Seven commenters approved of this amendment to this section. Two commenters objected to the restriction that a financially healthy, single common bond credit union with potential members in excess of 3,000 may not merge with a multiple group credit union unless there are supervisory reasons. The NCUA Board is bound by the merger provision in CUMAA and is adopting the amendment as proposed.

COMMON BOND CHARTER CONVERSIONS. The NCUA Board proposed to permit a credit union to continue to serve any group included in or added to its single common bond field of membership at the time of conversion to a single common bond credit union for a period of three years from the date of conversion, even if the group is later sold, spun-off, or otherwise divested as a result of a corporate reorganization/restructuring. If the credit union elects to continue to serve any sold, spun-off or otherwise divested group, then the credit union must convert back to a multiple common bond credit union on the third anniversary of the date of conversion. During this three-year period, it will continue to be treated as a single common bond credit union.

Ten commenters approved of this policy change. Three commenters stated this policy change is still overly restrictive. One commenter opposed the policy change. One commenter suggested that NCUA allow single common bond credit unions to continue in a single common bond status, consistent with the new corporate restructuring policy, if the credit union is still serving only its single sponsor and groups spun-off by the single sponsor and/or groups related to the single sponsor. The Board does not agree that additional changes, beyond those proposed, are necessary.

One commenter stated that NCUA should apply this same three-year provision to a credit union that converts to a community charter and has groups outside the community boundaries. That is, the credit union should be able to serve new members of these select groups for three years after the conversion. The NCUA Board believes that when a credit union converts to a community charter, it should serve the community and not select groups. The only exception is for groups obtained through an emergency

merger or emergency purchase and assumption. The grandfather provision in CUMAA is not applicable since the credit union has changed its charter type. Therefore, the NCUA Board is not adopting this commenter's suggestion.

CONVERSIONS OF MULTIPLE COMMON BOND CREDIT UNIONS. The NCUA Board proposed a clarification that a state-chartered multiple common bond credit union that converts to a federal charter may retain in its field of membership any group that it was serving at the time of conversion. Any subsequent additions or amendments to the field of membership would have to comply with federal field of membership policies. Additionally, the NCUA Board clarified that if any state chartered credit union that was considered under state law to be a single common bond credit union, but under federal rules would be classified a multiple common bond credit union, converts to a federal charter, the charter type must be changed to reflect federal policy.

Six commenters approved of the amendment regarding state multiple group credit union conversions to federal multiple group charters. Two commenters stated that NCUA should make this policy more expansive. One commenter opposed this policy change. The NCUA Board believes that the proposed change is proper and is adopting the proposed amendment.

The NCUA Board also proposed an amendment to Chapter IV, Section III.A of the Chartering Manual to clarify that a federal credit union converting to a state charter remains responsible for the operating fee for the year in which it converts. Four commenters opposed this clarification and requested that the fee be pro-rated. Currently, the operating fee is not pro-rated and the clarification does not change existing policy.

4. CORPORATE RESTRUCTURING FOR OCCUPATIONAL COMMON BOND CREDIT UNIONS AND MULTIPLE COMMON BOND CREDIT UNIONS

The most challenging and complex field of membership issues have involved the loss or dilution of a field of membership as a result of corporate reorganization or restructuring. Although IRPS 99-1 addressed this issue, the current policy does not completely set forth the resolution to various, and sometime numerous, consequences of a corporate restructuring/reorganization, particularly when the credit unions involved are reluctant and, in some cases, refuse to mutually address the problem. Therefore, the NCUA Board proposed amendments regarding corporate restructuring for both single bond credit unions and multiple common bond credit unions.

For single common bond credit unions, the NCUA Board proposed an amendment to clarify that if the group comprising the single common bond of a credit union merges with, or is acquired by, another group, the credit unions originally serving both groups can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment. In other words, it will be permissible for both credit unions to serve the same single common bond group. However, the credit unions may agree to divide the field of membership in some way. To clarify this practice, additional

language was proposed to state that unless an agreement is reached limiting the overlap resulting from the corporate restructuring, NCUA will permit a complete overlap of the credit unions' fields of membership.

For multiple common bond credit unions, the NCUA Board proposed an amendment to clarify that when two groups merge, or one group is acquired by the other, and each is in the field of membership of a credit union, then both (or all affected) credit unions can serve the resulting merged or acquired group, subject to any existing geographic limitation and without regard to any overlap provisions by a housekeeping amendment to its charter. As with single common bond credit unions, both credit unions will be allowed to serve the new group resulting from the merger, buyout or acquisition, and the credit unions can mutually divide the new field of membership. If they do not agree to a division of the field of membership, then a total overlap will be permitted, subject to any existing geographic limitation. The NCUA Board believes this to be in the best interests of the credit unions and the members due to the safety and soundness concerns that evolve when a credit union loses its field of membership.

Seventeen commenters strongly approved of all of the amendments regarding corporate restructuring. Many of these commenters commended NCUA for how it proposed to address this complex issue. One commenter stated the changes to this section are not appropriate. This commenter states that the desire of the corporate sponsor should have a significant bearing on which credit union will serve the employees. Although the desires of the sponsor are important, from a safety and soundness perspective, as well as consumer choice, it would not be advisable to allow a sponsor to control the fate of a credit union. Therefore, the NCUA Board is adopting the proposed amendments on corporate restructuring in final as proposed. The corporate restructuring policy is applicable in any situation where two or more credit unions, regardless of their charter type, acquire a group as a result of a merger or corporate restructuring/acquisition.

One commenter requested that single common bond credit unions should not have to list their subsidiaries. The Board does not agree. New groups, whether added as a result of an expansion or a housekeeping amendment, should be included in the field of membership to allow NCUA to monitor overlaps. It is important to note, however, that a credit union may have language in its field of membership as follows: " XYZ Corporation and its subsidiaries." If such language exists or is added to the field of membership of a single common bond credit union, then the credit union can legitimately serve any new subsidiary acquired by the sponsor through a housekeeping amendment provided the ownership requirements are met. In this instance, no overlap analysis would be required.

5. COMMUNITY CHARTERS

Although the NCUA Board did not propose any changes to its definition of a local community, one commenter suggested that any county or equivalent political jurisdiction, regardless of size, should be deemed a local community where residents

interact or have common interests. Three commenters stated that they agree with NCUA that there is no negative presumption that arises with populations larger than 300,000 in chartering a community credit union. One commenter stated that NCUA should consider defining a local community as one or more metropolitan statistical areas, as defined by the Office of Management and Budget, or one or more contiguous political subdivisions, such as counties, cities or towns. One commenter believes NCUA's definition of a local community is overly broad. Although the NCUA Board is not making any changes to the definition of local community, it does wish to note that areas larger than 300,000, such as Reno, Nevada, and San Francisco, California, qualify as a local community. Although not every large city will qualify as a local community, many cities and/or metropolitan areas may have the indicia of a local community.

COMMUNITY ACTION PLAN (CAP). The Board recommended amending IRPS 99-1 to require all community credit unions to develop a CAP. The intent of the CAP provision is to supplement a community credit union's marketing plan by specifically addressing how the credit union plans to market its services to the entire community, including any underserved or low-income areas, if applicable. The proposed amendment also included a provision to require the board of community credit unions to periodically review and update their CAP to determine if all segments of the community were being served. If a credit union failed to make reasonable efforts to follow its CAP, then NCUA could initiate appropriate supervisory actions to require compliance.

The rationale for CAP is relatively simple. Since service to the entire community is an essential consideration for community charters, then NCUA can and should set forth its expectation in this regard. Most importantly, a fundamental premise underlying the granting of any community charter is that the entire defined community area will be served. It has been, and continues to be, the intent of this Board that all segments of a community will be served, particularly members that reside in underserved areas. To this end, the CAP was proposed, notwithstanding the absence of tangible evidence regarding the manner in which credit unions attempt to meet this important goal.

While the overwhelming majority of the responses opposed the proposed CAP provision, it is noteworthy that only 99 of the commenters would be directly affected by the provision as it was proposed. Also, one comment letter received from a trade association in favor of the provision counts 110 community charters among its members. Six other commenters favored CAP and four hundred and twenty-three commenters opposed CAP, some in very strong terms. However, in raising those concerns, it was evident that most commenters would agree that community credit unions should serve the entire community. The method by which this should be accomplished was the focal point of disagreement since most commenters relayed their belief that community credit unions were, in fact, meeting the goal highlighted by the CAP provision.

Of those who approved of CAP, one recommended amending the proposal as follows: a) Credit unions with less than $10 million in assets should be exempted; b) NCUA

should specify appropriate sanctions rather than reserving broad discretionary supervisory powers; and c) NCUA should require that credit unions expanding into low-income communities submit regular service status reports. Another commenter recommended that CAP should extend to all federal credit unions.

The commenters who objected primarily made the following points: 1) they believe the proposal is similar to Community Reinvestment Act (CRA) requirements; 2) it is unnecessary since there is no evidence that community credit unions are not serving their entire field of membership adequately; 3) NCUA's legal authority to promulgate this requirement is doubtful; 4) meaningful comment is impossible because the guidance to examiners in reviewing the CAP is not part of the proposal (also examiners are not qualified to review such a plan); 5) implementation of CAP will encourage more conversions to state charters or thrifts and eventually destroy the dual chartering system; 6) community charters naturally serve their entire communities; 7) the CAP provision is not safety and soundness related; 8) CAP increases regulatory burden; and 9) CAP harms small credit unions by making them develop unnecessary paperwork. Some commenters were also concerned that NCUA will extend this proposal to all federal and state chartered credit unions. One commenter stated it would take close to 40 hours to prepare a CAP and not the two hours estimated by NCUA.

In opposing CAP, many commenters raised concerns tangential to the intent of CAP. In view of the objections raised, some observations relative to the CAP provision are appropriate.

CAP is not the same as the Community Reinvestment Act (CRA), nor was it intended to be "like CRA." CRA and its implementing regulations (12 U.S.C. 2901 et seq. and 12 C.F.R. 228) set forth lending tests, investment tests, service tests, standards and assessments to assess an institution's record of helping the needs of the local communities in which the institution is chartered, regardless of whether the people in some of these communities are customers or affiliated with the institution. Conversely, the CAP provision is intended to serve as a tool to ensure that a community credit union has a plan to serve all segments of the community it is chartered to serve.

Although there is only anecdotal evidence regarding community credit unions, as a group, serving their entire fields of membership, a CAP underscores the importance of this underlying principle for community charters. In fact, some federal credit union commenters sent in their business plans and marketing plans showing that they already had a plan in place to serve the entire community. Based on the comments of community credit unions and the submissions some of them provided, many community credit unions already have adopted plans and offer products and services designed to serve the entire community. Therefore, imposing this requirement on community credit unions should be minimally burdensome, if at all.

Many commenters suggested that their community credit unions are already serving the entire community and that their credit unions are accomplishing the intent of the CAP provision. To suggest, as some did, that addressing the issue of serving the entire

community is unnecessary overlooks the fact that many credit unions already recognize the importance of this issue. Additionally, any new community credit union, or a credit union converting to a community charter, must have addressed this issue under IRPS 99-1. For example, in this year alone, over 75 credit unions have converted to community charters and another 20 community credit unions have expanded their community boundaries.

In recognition of the concerns raised by the commenters, the Board modified the proposed language requiring a separate CAP document. Rather, a community credit union must address in some form how it is going to serve the community it was granted, whether it is in their business or marketing plan, or other appropriate documentation. This revision to the proposed rule accommodates those community credit unions that already have found an appropriate method of setting forth how they intend to serve the entire community.

The Board does not agree with the proposition that the CAP provision cannot be legally imposed. The Board has broad general authority to prescribe rules and regulations for the administration of the Federal Credit Union Act. 12 U.S.C. 1766(a); 12 U.S.C. 1789(a)(11). The Supreme Court has recognized that regulations promulgated under such broad empowering provisions of a statute "will be sustained so long as . . . [the regulation] is reasonably related to the purposes of the enabling legislation." Mourning v. Family Publications Service, Inc., 411 U.S. 356, 369 (1973) quoting Thorpe v. Housing Authority of the City of Durham, 393 U.S. 268, 280-81 (1969).

The Board also has specific regulatory authority in connection with its chartering and supervision of community credit unions, 12 U.S.C. 1759(g), and general statutory responsibility, 12 U.S.C. 1781(c)(1)(D), to assure that the convenience and needs of the members to be served are being met by any credit union to which it provides federal share insurance. Consequently, the CAP provision is intended to underscore this responsibility.

Failure to adequately serve the entire membership is a safety and soundness issue for a community credit union. A community credit union is frequently more susceptible to competition from other local financial institutions, sometimes lacks the ability to adequately implement payroll deduction and does not have support from any single sponsoring company or association. The long-term success of a community credit union is based on its ability to serve its entire community. Financial health and steady growth stem from a community credit union having an adequate plan to serve its entire membership and its entire community. Consequently, the failure to adequately serve the entire membership and/or the lack of an adequate plan to serve the entire community may ultimately become a safety and soundness issue for a community credit union.

Generally, the remainder of the commenter's primary reasons for opposing CAP were based on philosophical positions or on speculation of what may or may not happen if

CAP is implemented. Those concerns have been carefully considered. Briefly, the Board is not convinced, based on the evidence to date, that a plan devised by credit union management on how they intend to serve the entire community, the basis upon which the community charter was granted, will be harmful to small credit unions or decrease the value of a federal charter. In view of the modified approach, the issue of examiner guidance is moot since the examiner will review the document in the context of safety and soundness in the same manner they review a credit union's business plan or marketing plan.

It is the Board's view that the underlying goals for proposing a CAP should not be abandoned. In light of the comments received, however, a modified approach to accomplish the goal of ensuring service to all segments of a community, and with less regulatory burden, can still be accomplished.

The final rule requires that a community credit union address in either its marketing or business plan or other appropriate separate documentation, such as the strategic plan, project differentiation, etc, how it plans on serving the entire community, including how the credit union will market to the community and what products and services will be offered by the credit union to assist underserved members in the community. A separate document is not necessarily required. It will be the responsibility of credit union management to periodically review its business, marketing or other plans to evaluate all aspects of its annual and strategic goals, including service to all within the community. A credit union's use of its business or marketing plan is a factor that has been and will continue to be considered in the overall assessment of management**.** Included in this assessment will be the absence of any plan addressing how the credit union will serve the entire community. As stated in the preamble to the proposed rule, existing credit unions will have until December 31, 2001 to have a plan in place addressing how the credit union will serve the entire community. Finally, pursuant to this regulation, as well as Section 741.6 of NCUA's Rules and Regulations, the regional director may request periodic service status reports from a community credit union to ensure that the needs of the community are being met.

6. UNDERSERVED AREAS

Three criteria must be met before an underserved area can be added to any federal credit union's field of membership. First, the area must be a local community. Second, the area must also be classified as an investment area as defined in section 103(16) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703 (16)) and meet any additional requirements the Board may impose (the Board has not imposed any additional requirements). Third, the credit union adding the underserved area must establish and maintain an office or facility in the local community, neighborhood, or rural district.

After reviewing the statutory intent of service to underserved areas and the overall goal of improving credit union service to these areas, the NCUA Board proposed to modify the current polices relating to each of the three criteria in order to encourage further

development of credit union activities in underserved areas and thereby improve financial services to those most in need.

First, the NCUA Board proposed that if a geographic area meets the requirements for an investment area, and the size of the investment area, whether contained wholly or in part of a single political jurisdiction or multiple political jurisdictions, meets the presumptive criteria established in IRPS 99-1, then the credit union will not have to demonstrate common interests or interaction among the residents. Accordingly, the NCUA Board proposed that Chapter III, Section III, should be amended to state that the "well-defined local community, neighborhood, or rural district" requirement will be met if:

(1) the underserved area to be served is in a recognized single political jurisdiction, i.e., a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000, or

(2) the underserved area to be served is in multiple contiguous political jurisdictions, i.e., a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000.

Second, the NCUA Board proposed that if the area meets the poverty, median family income, unemployment, distressed housing, or population loss criteria as set forth in the Community Development Banking and Financial Institutions Act of 1994, then the Board will presume that there are significant unmet needs for loans or equity investments.

Third, the NCUA Board proposed that at the time the underserved area is added to the credit union's field of membership, a plan must be in place to establish and maintain an office or facility within two years. In addition to a permanent office or facility, this requirement may also be satisfied through periodic service to the underserved area through the use of a mobile office, an office open at select times each week, a service facility or shared service facilities. A credit union that has multiple underserved areas in its field of membership must meet the statutory requirement for each underserved area unless the underserved areas are contiguous. In addition, the NCUA Board proposed that if a credit union has a preexisting service facility within close proximity to the underserved area(s), then it will not be required to maintain a service facility within the underserved area. Close proximity will be determined on a case-by-case basis. However, the service facility must be readily accessible to the residents and the distance from the underserved area to the service facility should not be an impediment to a majority of the residents to transact credit union business.

Twelve commenters approved of the amendments regarding underserved areas. One of these commenters stated that a service facility is close to an underserved area if it is accessible by public transportation or within walking distance. Another commenter suggested a service facility is not necessary and a credit union could use electronic

means to serve the underserved community. Two commenters opposed the change on the location of the service facility stating that it is contrary to statute.

The NCUA Board is adopting the changes as proposed in the final rule. To clarify, the credit union adding the underserved area must establish a service facility within the underserved area within a two-year period, or the credit union's service facility must be reasonably proximate to the underserved area. The key to the reasonably proximate concept is that the availability of products and services be easily accessible to community residents.

In addition to the amendments discussed above, the Board requested comment on providing incentives for credit unions to add underserved communities if the underserved community is a minimum population size. Comments were specifically requested on what the population size of the underserved area should be in order for the credit union to qualify for one or more of the following incentives:

- The asset base used to compute the credit union's operating fee will be frozen for a two-year period.

- The operating fee will be reduced by ten percent or more per year until the total reduction equals $20,000 over a maximum five-year period.

- The assets of the underserved area will not be included in the calculation of the credit union's operating fee for five years.

- Fixed assets in the underserved area will not be counted toward the fixed asset limitation of §701.35 of NCUA's Rules and Regulations. In addition, the credit union would be exempt from the charitable donation regulation, §701.25, and would be allowed to increase the dollar threshold from $100,000 to $250,000 when an appraisal is required, §722.3(a)(1).

Two commenters stated that the final rule should provide incentives for adding underserved areas, but did not suggest any specific incentive. One commenter appeared to approve of all the incentives, but suggested a minimum size for the underserved area for the incentives to be applicable. Another commenter stated that there should be no minimum size. One commenter believes that incentives to encourage the addition of underserved areas should be geared to performance. This commenter further stated that no credit union should receive any incentive if it simply adds an underserved area, but fails to serve the low-income population therein. Assuming that NCUA links incentives to performance, this commenter would support the regulatory waivers set forth above.

One commenter stated that providing incentives for adding underserved areas needs further study before any of them are implemented. One commenter specifically opposed the operating fee incentive. One commenter specifically opposed exempting credit unions from certain regulations simply because they added an underserved area.

One commenter believes NCUA should encourage and support credit unions that serve underserved groups but did not approve of the cited incentives. Three commenters did not approve of having incentives to add underserved areas.

One commenter stated that credit unions adding underserved areas should get special consideration of loan delinquency or loss experience in connection with serving an underserved community. One commenter suggested that NCUA consider allowing credit unions that serve underserved areas to accept some form of secondary capital account or nonmember deposit that would be considered regulatory net worth.

One commenter suggested that, instead of incentives, NCUA establish a grant program wherein credit unions could apply for monetary awards based on the extent of their operations in underserved communities. One commenter did not approve of the incentives, but suggested deleting a regional director's ability to request a credit union's service status report on serving an underserved area. One commenter requested NCUA always request periodic service status reports on serving underserved areas.

At this time, the NCUA Board is deferring any immediate action regarding providing incentives to credit union's adding underserved areas. As a result of the changes adopted in this final regulation, it would appear that additional incentives may not be necessary. Further, the Board is encouraged that as of September 30, 2000, thirty credit unions have added underserved areas, as opposed to nine in 1999. The Board will continue to monitor this issue, and if more incentives are required to increase service to underserved areas, it will again be reviewed. The NCUA Board is also intrigued by the idea of a grant program and will further consider this idea.

The NCUA Board still believes that it is important for the regional director to have the discretion to ask for service status reports to determine if the underserved areas are being adequately served by the credit union. This data is especially important if the credit union seeks to add additional underserved areas. In addition, this information may prove useful in determining what type of problems credit unions may encounter in serving underserved areas.

7. Miscellaneous

One commenter stated that the unavailability of credit union service should not factor into reasonable proximity. Two commenters requested that NCUA add the following sentence in the preamble to the proposed rule to the final rule: "the non-availability of other credit unions is a factor to be considered in determining whether the group is within reasonable proximity…" of a credit union wishing to add the group to its field of membership. The NCUA Board agrees with these two commenters and has incorporated this statement with an additional clarification in the final rule.

One commenter encouraged NCUA to continue to consider the "reasonable proximity" issue on a case-by-case basis to enable credit unions with the greatest opportunity to reach out to consumers, especially those living in underserved communities. One

commenter stated that NCUA should avoid mileage limitations in defining reasonable proximity. To restate current policy, the NCUA Board does not have any mileage limitations for adding select groups and defines reasonable proximity on a case-by-case basis as was previously discussed in the preamble to IRPS 99-1. 63 FR 71988, 72002-72003 (December 30, 1998).

One commenter stated that NCUA's interpretation of "single common bond credit union" should include credit unions that can demonstrate meaningful affinity and bonds of groups other than on the basis of the employer entity or the association entity. One commenter requested that the definition of occupational common bond include trade, industry and professional designations. Although both of these suggestions would meet the legal requirements of CUMAA, the Board has operational concerns with such an approach and does not believe a broader definition is currently necessary.

One commenter asked that NCUA clarify that, for single common bond credit unions, additional sponsor-related groups can be added after the enactment of CUMAA, but that no unrelated groups can be added to single common bond credit unions. This commenter's statement is correct. One commenter suggested that credit unions should be allowed to serve the customers of select groups that have been approved in their fields of membership. The NCUA Board disagrees and does not believe such an approach is legal under CUMAA.

One commenter requested that NCUA no longer require a letter from the group desiring credit union service in regard to a multiple group field of membership expansion. The NCUA Board disagrees with this commenter's suggestion. It should be a group's decision to affiliate with a credit union. Additionally, there are legal requirements in adding a group that a letter from the group may satisfy.

8. TECHNICAL AMENDMENT ON THE TITLE OF THE SECTION REGARDING IMMEDIATE FAMILY MEMBERS

The Board proposed to change the titles of Chapter 2, Section II.H, Chapter II, Section III.H. and Chapter II, Section IV. H. to "Other Persons Eligible for Credit Union Membership." The NCUA Board received no comment on this change and is adopting this amendment in final as proposed.

9. Express Chartering Program

The Field of Membership Taskforce and the Office of Examination and Insurance have developed and are ready to implement an express chartering program (ECP). The ECP utilizes standardized forms, NCUA on-site assistance, and certain restrictions on the initial services that may be offered. The ECP will be periodically reviewed by the Office of Examination and Insurance to determine whether it is achieving its intended purpose without creating additional risks to the National Credit Union Share Insurance Fund.

The ECP will use, to the greatest extent possible, standardized forms to facilitate the issuance of a charter early during the chartering process. They include:

- Model business plan for limited services;
- Standard member survey format;
- Policy guidelines (shares, lending, investments, etc.); and
- Sample letters for sponsor support, grants, and nonmember deposits (where applicable).

Initially, credit unions using ECP will only be able to offer basic services, some of which include regular shares, signature loans not exceeding predetermined amounts, and the sale of money orders and travelers checks. This will enable the officials to familiarize themselves with basic credit union operations and cash management skills. The Letter of Understanding and Agreement that always accompanies a new charter will include this restriction. An applicant credit union can elect not to use ECP; however, standard chartering procedures must then be used.

Once a credit union demonstrates it can manage these limited responsibilities, the officials can submit a new credit union prepared business plan to expand services (e.g., share drafts, credit cards, etc.). This further refinement of the business plan can be accomplished in stages with increased responsibilities and services offered commensurate with the approved business plan.

The advantage of the ECP is that once the credit union is chartered, some services can be offered, and the officials will gain experience and knowledge in the operation of a credit union as they prepare a more detailed business plan to implement additional services. It is also believed that the importance of a business plan will be better understood if the officials are actually engaged in operating the credit union.

While NCUA's resources are limited, judicious use of NCUA staff to work with qualifying groups will be beneficial. The ECP will make use of the regional economic development specialists (EDS) to guide the group through the application process. Once the group is chartered, the EDS and examiner will work with the credit union, as they do now.

Internet Expansion Requests

The Field of Membership Taskforce and the Office of the Chief Information Officer have developed an internet select group expansion form, which is expected to be implemented when testing is completed. This process allows credit unions to submit requests for occupational groups of 500 or less primary potential members online with an expedited approval by NCUA. The regional directors can provide credit unions with specific details on how to do an expansion through the internet.

C. REGULATORY PROCEDURES:

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The final amendments will not have a significant economic impact on a substantial number of small credit unions and therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The reporting requirements in IRPS 00-1 have been approved by the Office of Management and Budget. The OMB number is 3133-0015 and will be displayed in the table at 12 CFR 795.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final rule only applies to federal credit unions. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that the final rule does not constitute a policy that has federalism implications for purposes of the executive order.

Congressional Review
OMB has determined that the provisions of IRPS 00-1 do not constitute a major rule.

D. AGENCY REGULATORY GOAL:

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. We requested comments on whether the proposed amendments are understandable and minimally intrusive if implemented as proposed. No commenters addressed this issue, except in regard to CAP, which was previously addressed.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and record keeping requirements

By the National Credit Union Administration Board on October 19, 2000.

_____
Becky Baker
Secretary of the Board

Accordingly, NCUA amends 12 CFR part 701 as follows:

PART 701-ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789.
Section 701.6 is also authorized by 15 U.S.C. 3717.
Section 701.31 is also authorized by 15 U.S.C. 1601, *et seq.,* 42 U.S.C. 1981 and 3601-3610.
Section 701.35 is also authorized by 12 U.S.C. 4311-4312.

2. Section 701.1 is revised to read as follows:

§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration policies concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 99-1, Chartering and Field of Membership Policy (IRPS 99-1), as amended by IRPS 00-1. Copies may be obtained by contacting NCUA at the address found in Section 790.2(b) of this chapter. The combined IRPS are incorporated into this section.

(Approved by the Office of Management and Budget under control number 3133-0015.)
Note: The text of the Interpretive Ruling and Policy Statement (IRPS 99-1) does not, and the following amendments will not, appear in the Code of Federal Regulations.

3. In IRPS 99-1, Chapter 2, Section II.A is revised to read as follows:

A single occupational common bond federal credit union may include in its field of membership all persons and entities who share that common bond. NCUA permits a person's membership eligibility in a single occupational common bond group to be established in four ways:

- employment (or a long-term contractual relationship equivalent to employment) in a single corporation or other legal entity makes that person part of an single occupational common bond;

- employment in a corporation or other legal entity with a controlling ownership interest (which shall not be less than 10 percent) in or by another legal entity makes that person part of a single occupational common bond;

- employment in a corporation or other legal entity which is related to another legal entity (such as a company under contract and possessing a strong dependency relationship with another company) makes that person part of a single occupational common bond; or

- employment or attendance at a school makes that person part of a single occupational common bond (see Chapter 2, III.A.1).

A geographic limitation is not a requirement for a single occupational common bond. However, for purposes of describing the field of membership, the geographic areas being served will be included in the charter. For example:

- Employees, officials, and persons who work regularly under contract in Miami, Florida for ABC Corporation or the subsidiaries listed below;

- Employees of ABC Corporation who are paid from...;

- Employees of ABC Corporation who are supervised from...;

- Employees of ABC Corporation who are headquartered in...; and/or

- Employees of ABC Corporation who work in the United States.

So that NCUA may monitor any potential field of membership overlaps, each group to be served (e.g., new employees of subsidiaries, franchisees, and contractors) should be separately listed in Section 5 of the charter. However, in situations where multiple contractors, who qualify based on a strong dependency relationship, are sole proprietors, the regional director may determine that more generalized wording is acceptable (e.g., "non-incorporated owner-operators who work regularly under contract to AJM Industries, Inc. in Glenville, New York"). In addition, it is permissible to simply state in a single common bond charter the following: "AJM Industries, Inc. and its subsidiaries." If AJM Industries, Inc. adds new subsidiaries the charter can be amended with a simple housekeeping amendment and no overlap analysis is required.

The corporate or other legal entity (i.e., the employer) may also be included in the common bond - e.g., "ABC Corporation." The corporation or legal entity will be defined in the last clause in Section 5 of the credit union's charter.

A charter applicant must provide documentation to establish that the single occupational common bond requirement has been met.

SOME EXAMPLES OF A SINGLE OCCUPATIONAL COMMON BOND ARE:

- Employees of the Hunt Manufacturing Company who work in West Chester, Pennsylvania. (common bond - same employer with geographic definition);

- Employees of the Buffalo Manufacturing Company who work in the United States. (common bond - same employer with geographic definition);

- Employees, elected and appointed officials of municipal government in Parma, Ohio. (common bond - same employer with geographic definition);

- Employees of Johnson Soap Company and its majority owned subsidiary, Johnson Toothpaste Company, who work in, are paid from, are supervised from, or are headquartered in Augusta and Portland, Maine. (common bond - parent and subsidiary company with geographic definition);

- Employees of MMLLJS contractor who work regularly at the U.S. Naval Shipyard in Bremerton, Washington. (common bond - employees of contractors with geographic definition);

- Employees, doctors, medical staff, technicians, medical and nursing students who work in or are paid from the Newport Beach Medical Center, Newport Beach, California. (single corporation with geographic definition);

- Employees of JLS, Incorporated and MJM, Incorporated working for the LKM Joint Venture Company in Catalina Island, California. (common bond - same employer - ongoing dependent relationship);

- Employees of and students attending Georgetown University. (common bond - same occupation); or

- Employees of all the schools supervised by the Timbrook Board of Education in Timbrook, Georgia. (common bond - same employer).

SOME EXAMPLES OF **INSUFFICIENTLY** DEFINED SINGLE OCCUPATIONAL COMMON BONDS ARE:

- Employees of manufacturing firms in Seattle, Washington. (no defined occupational sponsor);

- Persons employed or working in Chicago, Illinois. (no occupational common bond);

- Employees of all colleges and universities in the State of Texas. (not a single occupational common bond); or

- Employees of Timbrook School District and Swanbrook School District, in Burns, Georgia. (not a single occupational common bond).

4. In IRPS 99-1, Chapter 2, Section III.A.1 is revised to read as follows:

A single associational federal credit union may include in its field of membership, regardless of location, all members and employees of a recognized association. A single associational common bond consists of individuals (natural persons) and/or groups (non natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests. Separately chartered associational groups can establish a single common bond relationship if they are integrally related and share common goals and purposes. For example, two or more churches of the same denomination, Knights of Columbus Councils, or locals of the same union can qualify as a single associational common bond.

Individuals and groups eligible for membership in a single associational credit union can include the following:

- Natural person members of the association (for example, members of a union or church members);

- Non-natural person members of the association;

- Employees of the association (for example, employees of the labor union or employees of the church); and

- The association.

Generally, a single associational common bond does not include a geographic definition. However, a proposed or existing federal credit union may limit its field of membership to a single association or geographic area. NCUA may impose a geographic limitation if it is determined that the applicant credit union does not have the ability to serve a larger group or there are other operational concerns. All single associational common bonds will include a definition of the group that may be served based on the effective date of the association's charter, bylaws, and any other equivalent documentation. If the associational charter crosses NCUA regional boundaries, each of the affected regional directors must be consulted prior to NCUA action on the charter.

Qualifying associational groups must hold meetings open to all members, must sponsor other activities which demonstrate that the members of the group meet to accomplish the objectives of the association, and must have an authoritative definition of who is eligible for membership. Usually, this will be found in the association's charter and bylaws.

The common bond for an associational group cannot be established simply on the basis that the association exists. In determining whether a group satisfies associational common bond requirements for a federal credit union charter, NCUA will consider the totality of the circumstances, such as:

- whether members pay dues;
- whether members participate in the furtherance of the goals of the association;
- whether the members have voting rights. To meet this requirement, members need not vote directly for an officer, but may vote for a delegate who in turn represents the members' interests;
- whether the association maintains a membership list;
- the association's membership eligibility requirements; and
- the frequency of meetings.

A support group whose members are continually changing or whose duration is temporary may not meet the single associational common bond criteria. Individuals or honorary members who only make donations to the association are not eligible to join the credit union. Other classes of membership that do not meet to accomplish the goals of the association would not qualify.

Educational groups -- for example, parent-teacher organizations, alumni associations, and student organizations in any school -- and church groups constitute associational common bonds and may qualify for a federal credit union charter.

Student groups (e.g., students enrolled at a public, private, or parochial school) may constitute either an associational or occupational common bond. For example, students enrolled at a church sponsored school could share a single associational common bond with the members of that church and may qualify for a federal credit union charter. Similarly, students enrolled at a university, as a group by itself, or in conjunction with the faculty and employees of the school, could share a single occupational common bond and may qualify for a federal credit union charter (see Charter 2, II.A).

Homeowner associations, tenant groups, co-ops, consumer groups, and other groups of persons having an "interest in" a particular cause and certain consumer cooperatives may also qualify as an association.

The terminology "Alumni of Jacksonville State University" is insufficient to demonstrate an associational common bond. To qualify as an association, the alumni association must meet the requirements for an associational common bond. The alumni of a school must first join the alumni association, and not merely be alumni of the school to be eligible for membership.

Associations based primarily on a client-customer relationship do not meet associational common bond requirements. However, having an incidental client-customer relationship does not preclude an associational charter as long as the

associational common bond requirements are met. For example, a fraternal association that offers insurance, which is not a condition of membership, may qualify as a valid associational common bond.

Applicants for a single associational common bond federal credit union charter or a field of membership amendment to include an association must provide, at the request of the regional director, a copy of the association's charter, bylaws, or other equivalent documentation, including any legal documents required by the state or other governing authority.

The associational sponsor itself may also be included in the field of membership - e.g., “Sprocket Association” -- and will be shown in the last clause of the field of membership.

5. In IRPS 99-1, Chapter 2, Section II.B.4 and Section III.B.4 replace the number “200” with the number “500.”:

6. In IRPS 99-1, Chapter 2, Section IV.B.3 is revised to read as follows:

A multiple common bond credit union requesting a select group expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015) to the appropriate NCUA regional director. If a credit union is adding a group of 500 or less primary potential members, then the NCUA 4015-EZ should be used. The request must be signed by an authorized credit union representative.

The NCUA 4015 (for groups in excess of 500 primary potential members) must be accompanied by the following:

- A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:
    - the group’s occupational or associational common bond;
    - that the group wants to be added to the federal credit union’s field of membership;
    - whether the group presently has other credit union service available;
    - the number of persons currently included within the group to be added and their locations;
    - the group’s proximity to credit union’s nearest service facility, and

- why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards, and provide comments on as many of the following factors that are applicable (A credit union need not address every item on the list, simply those issues that are relevant to its particular request):

    - Member location - whether the membership is widely dispersed or concentrated in a central location.

    - Demographics - the employee turnover rate, economic status of the group's members, and whether the group is more apt to consist of savers and/or borrowers.

    - Market competition - the availability of other financial services.

    - Desired services and products – the type of services the group desires in comparison to the type of services a new credit union could offer.

    - Sponsor subsidies - the availability of operating subsidies.

    - The desire of the sponsor.

    - Employee interest - the extent of the employees' interest in obtaining a credit union charter.

    - Evidence of past failure - whether the group previously had its own credit union or previously filed for a credit union charter.

    - Administrative capacity to provide services - will the group have the management expertise to provide the services requested.

- If the group is eligible for membership in any other credit union, documentation must be provided to support inclusion of the group under the overlap standards set forth in Section IV.E of this Chapter; and

- The most recent copy of the group's charter and bylaws or equivalent documentation (for associational groups).

The NCUA 4015-EZ (for groups of 500 or less primary potential members) must be accompanied by the following:

- A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

- how the group shares the credit union's occupational or associational common bond;

- that the group wants to be added to the applicant federal credit union's field of membership;

- the number of persons currently included within the group to be added and their locations; and

- the group's proximity to credit union's nearest service facility.

- The most recent copy of the group's charter and bylaws or equivalent documentation (for associational groups).

7. In IRPS 99-1, Chapter 2, Section II.E.1 is revised to read as follows:

An overlap exists when a group of persons is eligible for membership in two or more credit unions. As a general rule, NCUA will not charter two or more credit unions to serve the same single occupational group. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union. However, when two or more credit unions are attempting to serve the same occupational group, an overlap can be permitted.

Proposed or existing credit unions must investigate the possibility of an overlap with federally insured credit unions prior to submitting an application for a proposed charter or expansion if the group(s) is greater than 500 primary potential members.

When an overlap situation does arise, officials of the involved credit unions must attempt to resolve the overlap issue. If the matter is resolved between the affected credit unions, the applicant must submit a letter to that effect from the credit union whose field of membership already includes the subject group.

If no resolution is possible or the overlapped credit union fails to provide a letter, an application for a new charter or field of membership expansion may still be submitted, but must also include information regarding the overlap and documented attempts at resolution. Documentation on the interests of the group, such as a petition signed by a majority of the group's members, will be strongly considered.

An overlap will not be considered adverse to the overlapped credit union if:

- the group has 500 or less primary potential members or the overlap is otherwise incidental in nature – i.e., the group of persons in question is so small as to have no material effect on the original credit union;

- the overlapped credit union does not object to the overlap; or
- there is limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time.

In reviewing the overlap, the regional director will consider:

- the nature of the issue;
- efforts made to resolve the matter;
- financial effect on the overlapped credit union;
- the desires of the group(s);
- whether the original credit union fails to provide requested service;
- the desire of the sponsor organization; and
- the best interests of the affected group and the credit union members involved.

Potential overlaps of a federally insured state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from any overlap protection.

New charter applicants and every single occupational common bond group which comes before the regional director for affiliation with an existing federal credit union must advise the regional director in writing whether the group is included within the field of membership of any other credit union except a community charter. This notification requirement is not applicable to groups with 500 or less primary potential members. If cases arise where the assurance given to a regional director concerning unavailability of credit union service is inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

NCUA will permit single occupational federal credit unions to overlap community charters without performing an overlap analysis.

8. In IRPS 99-1, Chapter 2, Section II.E.2 is revised to read as follows:

A federal credit union's field of membership will always be governed by the common bond descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the common bond

described in Section 5. Where acquisitions are made which add a new subsidiary, the group cannot be served until the subsidiary is included in the field of membership through a housekeeping amendment.

Overlaps may occur as a result of restructuring or merger of the parent organization. Credit unions affected by organizational restructuring or merger should attempt to resolve overlap issues among themselves. If an agreement is reached, they must apply to NCUA for a modification of their fields of membership to reflect the groups each will serve. Unless an agreement is reached limiting the overlap resulting from the corporate restructuring, NCUA will permit a complete overlap of the credit unions' fields of membership.

In addition, credit unions must submit to NCUA documentation explaining the restructuring and providing information regarding the new organizational structure. The credit union must identify divisions and subsidiaries and the locations of each. Where the sponsor and its employees desire to continue service, NCUA may use wording such as the following:

- Employees of Lucky Corporation, formerly a subsidiary of Tool, Incorporated, located in Charleston, South Carolina.

9. In IRPS 99-1, Chapter 2, Section III.E.1 is revised to read as follows:

An overlap exists when a group of persons is eligible for membership in two or more credit unions. As a general rule, NCUA will not charter two or more credit unions to serve the same single associational group. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union. However, when two or more credit unions are attempting to serve the same associational group, an overlap can be permitted.

Proposed or existing credit unions must investigate the possibility of an overlap with federally insured credit unions prior to submitting an application for a proposed charter or expansion if the group(s) is greater than 500 primary potential members.

When an overlap situation does arise, officials of the involved credit unions must attempt to resolve the overlap issue. If the matter is resolved between the credit unions, the applicant must submit a letter to that effect from the credit union whose field of membership already includes the subject group.

If no resolution is possible or the overlapped credit union fails to provide a letter, an application for a new charter or field of membership expansion may still be submitted, but must also include information regarding the overlap and documented attempts at resolution. Documentation on the interests of the group, such as a petition signed by a majority of the group's members, will be strongly considered.

An overlap will not be considered adverse to the overlapped credit union if:

- the group has 500 or less primary potential members or the overlap is otherwise incidental in nature – i.e., the group of persons in question is so small as to have no material effect on the original credit union;

- the overlapped credit union does not object to the overlap;

- there is limited participation by members of the group in the original credit union after the expiration of a reasonable period of time; or

- the field of membership is broadly stated, such as a national association.

In reviewing the overlap, the regional director will consider:

- the nature of the issue;

- efforts made to resolve the matter;

- financial effect on the overlapped credit union;

- the desires of the group(s);

- whether the original credit union fails to provide requested service;

- the desire of the sponsor organization; and

- the best interests of the affected group and the credit union members involved.

Potential overlaps of a federally insured state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from any overlap protection.

New charter applicants and every single associational common bond group which comes before the regional director for affiliation with an existing federal credit union must advise the regional director in writing whether the group is included within the field of membership of any other credit union except a community charter. This notification requirement is not applicable to groups with 500 or less primary potential members. If cases arise where the assurance given to a regional director concerning unavailability of credit union service is inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

NCUA will permit single associational federal credit unions to overlap community charters without performing an overlap analysis.

10. In IRPS 99-1, Chapter 2, Section III.E.2 is revised to read as follows:

A federal credit union's field of membership will always be governed by the common bond descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the common bond described in Section 5.

Overlaps may occur as a result of restructuring or merger of the parent organization. Credit unions affected by organizational restructuring or merger should attempt to resolve overlap issues among themselves. If an agreement is reached, they must apply to NCUA for a modification of their fields of membership to reflect the groups each will serve. Unless an agreement is reached limiting the overlap resulting from the corporate restructuring, NCUA will permit a complete overlap of the credit unions' fields of membership.

11. In IRPS 99-1, Chapter 2, Section IV.E.2 is revised to read as follows:

A federal credit union's field of membership will always be governed by the field of membership descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of any select group listed in Section 5. Where acquisitions are made which add a new subsidiary, the group cannot be served until the subsidiary is included in the field of membership through a housekeeping amendment.

Overlaps may occur as a result of restructuring or merger of the parent organization. When such overlaps occur, each credit union must request a field of membership amendment to reflect the new groups each wishes to serve. The credit union can continue to serve any current group in its field of membership that is acquiring a new group or has been acquired by a new group. The new group cannot be served by the credit union until the field of membership amendment is approved by NCUA.

Credit unions affected by organizational restructuring or merger should attempt to resolve overlap issues among themselves. Unless an agreement is reached limiting the overlap resulting from the corporate restructuring, NCUA will permit a complete overlap of the credit unions' fields of membership. When two groups merge, or one group is acquired by the other, and each is in the field of membership of a credit union, both (or all affected) credit unions can serve the resulting merged or acquired group, subject to any existing geographic limitation and without regard to any overlap provisions. This can be accomplished through a housekeeping amendment.

In addition, credit unions must submit to NCUA documentation explaining the restructuring and providing information regarding the new organizational structure. The credit union must identify divisions and subsidiaries and the locations of each. Where the sponsor and its employees desire to continue service, NCUA may use wording such as the following:

- Employees of MHS Corporation, formerly a subsidiary of Tool, Incorporated, located in Charleston, South Carolina.

12. In IRPS 99-1, Chapter 2, Section IV.A.1 is revised to read as follows:

A federal credit union may be chartered to serve a combination of distinct, definable single occupational and/or associational common bonds. This type of credit union is called a multiple common bond credit union. Each group in the field of membership must have its own occupational or associational common bond. For example, a multiple common bond credit union may include two unrelated employers, or two unrelated associations, or a combination of two or more employers or associations. Additionally, these groups must be within reasonable geographic proximity of the credit union. That is, the groups must be within the service area of one of the credit union's service facilities. These groups are referred to as select groups. A multiple common bond credit union cannot expand using single common bond criteria.

A federal credit union's service area is the area that can reasonably be served by the service facilities accessible to the groups within the field of membership. The service area will most often coincide with that geographic area primarily served by the service facility. Additionally, the groups served by the credit union must have access to the service facility. The non-availability of other credit union service is a factor to be considered in determining whether the group is within reasonable proximity of a credit union wishing to add the group to its field of membership.

A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. A service facility also includes a shared branch if the credit union either (1) owns directly or through a CUSO or similar organization at least a 5 percent interest in the service facility, or (2) the service facility is local to the credit union and the credit union is an authorized participant in the service center. This definition does not include an ATM.

The select group as a whole will be considered to be within a credit union's service area when:

- A majority of the persons in a select group live, work, or gather regularly within the service area;

- The group's headquarters is located within the service area; or

- The group's "paid from" or "supervised from" location is within the service area.

13. In IRPS 99-1, Chapter 2, Section IV.B.2 is revised to read as follows:

An existing multiple common bond federal credit union that submits a request to amend its charter must provide documentation to establish that the multiple common bond requirements have been met. All amendments to a multiple common bond credit union's field of membership must be approved by the regional director.

NCUA will approve groups to a credit union's field of membership, if the agency determines in writing that the following criteria are met:

- The credit union has not engaged in any unsafe or unsound practice, as determined by the regional director, which is material during the one year period preceding the filing to add the group;

- The credit union is "adequately capitalized." NCUA defines adequately capitalized to mean the credit union has a net worth ratio of not less than 6 percent. For low-income credit unions or credit unions chartered less than ten years, the regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement. For any other credit union, the regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement, and the addition of the group would not adversely affect the credit union's capitalization level.

- The credit union has the administrative capability to serve the proposed group and the financial resources to meet the need for additional staff and assets to serve the new group;

- Any potential harm the expansion may have on any other credit union and its members is clearly outweighed by the probable beneficial effect of the expansion. With respect to a proposed expansion's effect on other credit unions, the requirements on overlapping fields of membership set forth in Section IV.E of this Chapter are also applicable; and

- If the formation of a separate credit union by such group is not practical and consistent with reasonable standards for the safe and sound operation of a credit union.

A more detailed analysis is required for groups of 3,000 or more primary potential members requesting to be added to a multiple common bond credit union; however, only groups over 500 must address why they cannot form their own credit union. It is

incumbent upon the credit union to demonstrate that the formation of a separate credit union by such a group is not practical. The group must provide evidence that it lacks sufficient volunteer and other resources to support the efficient and effective operations of a credit union or does not meet the economic advisability criteria outlined in Chapter 1. If this can be demonstrated, the group may be added to a multiple common bond credit union's field of membership.

14. In IRPS 99-1, Chapter 2, Section IV.E.1 is revised to read as follows:

An overlap exists when a group of persons is eligible for membership in two or more credit unions, including state charters. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union.

Proposed or existing credit unions must investigate the possibility of an overlap with federally insured credit unions prior to submitting an application for a proposed charter or expansion if the group(s) is greater than 500 primary potential members. An overlap analysis is not required for groups with 500 or less primary potential members.

When an overlap situation requiring analysis does arise, officials of the expanding credit union must ascertain the views of the overlapped credit union. If the overlapped credit union does not object, the applicant must submit a letter or other documentation to that effect. If the overlapped credit union does not respond, the expanding credit union must notify NCUA in writing of its attempt to obtain the overlapped credit union's comments.

NCUA will generally not approve an overlap unless the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in field of membership clearly outweighs any adverse effect on the overlapped credit union.

In reviewing the overlap, the regional director will consider:

- the view of the overlapped credit union(s);
- whether the overlap is incidental in nature -- the group of persons in question is so small as to have no material effect on the original credit union;
- whether there is limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time;
- whether the original credit union fails to provide requested service;
- financial effect on the overlapped credit union;

- the desires of the group(s);

- the desire of the sponsor organization; and

- the best interests of the affected group and the credit union members involved.

Generally, if the overlapped credit union does not object, and NCUA determines that there is no safety and soundness problem, the overlap will be permitted.

Potential overlaps of a federally insured state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from any overlap protection.

New charter applicants and every select group which comes before the regional director for affiliation with an existing federal credit union must advise the regional director in writing whether the group is included within the field of membership of any other credit union. This requirement is not applicable to groups with 500 or less primary potential members. If cases arise where the assurance given to a regional director concerning unavailability of credit union service is inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

NCUA will permit multiple common bond federal credit unions to overlap community charters without performing an overlap analysis.

15. In IRPS 99-1, Chapter 2, Section IV.D.1 is revised to read as follows:

a. All select groups in the merging credit union's field of membership have less than 3,000 primary potential members.

A voluntary merger of two or more federal credit unions is permissible as long as each select group in the merging credit union's field of membership has less than 3,000 primary potential members. While the merger requirements outlined in Section 205 of the Federal Credit Union Act must still be met, the requirements of Chapter 2, Section IV.B.2 of this manual are not applicable.

b. One or more select groups in the merging credit union's field of membership has 3,000 or more primary potential members.

If the merging credit unions serve the same group, and the group consists of 3,000 or more primary potential members, then the ability to form analysis is not required for that group. If the merging credit union has any other groups consisting of 3,000 or more primary potential members, special requirements apply. NCUA will analyze each group of 3,000 or more primary potential members, except as noted above, to determine whether the formation of a separate credit union by such a group is practical. If the

formation of a separate credit union by such a group is not practical because the group lacks sufficient volunteer and other resources to support the efficient and effective operations of a credit union or does not meet the economic advisable criteria outlined in Chapter 1, the group may be merged into a multiple common bond credit union. If the formation of a separate credit union is practical, the group must be spun-off before the merger can be approved.

c. Merger of a single common bond credit union into a multiple common bond credit union.

A financially healthy single common bond credit union with a primary potential membership in excess of 3,000 primary potential members cannot merge into a multiple common bond credit union, absent supervisory reasons.

d. Merger Approval

If the merger is approved, the qualifying groups within the merging credit union's field of membership will be transferred intact to the continuing credit union and can continue to be served.

Where the merging credit union is state-chartered, the field of membership rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

16. In IRPS 99-1, Chapter 2, Section IV.D.2 is revised to read as follows:

The NCUA may approve the merger of any federally insured credit union when safety and soundness concerns are present without regard to the 3,000 numerical limitation. The credit union need not be insolvent or in danger of insolvency for NCUA to use this statutory authority. Examples constituting appropriate reasons for using this authority are: abandonment of the management and/or officials and an inability to find replacements, loss of sponsor support, serious and persistent record keeping problems, sustained material decline in financial condition, or other serious or persistent circumstances.

17. In IRPS 99-1, Chapter 2, Section IV.F is revised to read as follows:

A multiple common bond federal credit union may apply to convert to a community charter provided the field of membership requirements of the community charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. Members of record can continue

to be served. Also, in order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 1, Section IV.D.

A multiple common bond federal credit union may apply to convert to a single occupational or associational common bond charter provided the field of membership requirements of the new charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. However, a credit union can continue to serve any group included in, or added to, its single common bond field of membership at the time of conversion to a single common bond credit union for a period of three years from the date of conversion if the group is later sold, spun-off or otherwise divested as a result of a corporate reorganization/restructuring. If the credit union elects to continue to serve any sold, spun-off or otherwise divested group after three years from the date of conversion, then it must convert back to a multiple common bond credit union. During this three-year period, it will continue to be treated as a single common bond credit union.

Once a multiple common bond credit union converts to a single occupational or assocational credit union, it cannot convert back to a multiple common bond credit union for a period of three years, unless there are safety and soundness concerns.

18. In IRPS 99-1, Chapter 2, Section II.B.2 is revised to read as follows:

If the single common bond group that comprises a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This is an event which requires a change to the credit union’s field of membership. NCUA will not permit a single common bond credit union to maintain in its field of membership a sold or spun-off group to which it has been providing service unless the group otherwise qualifies for membership in the credit union or if the credit union converts to a multiple common bond credit union.

If the group comprising the single common bond of the credit union merges with, or is acquired by, another group, the credit union can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment.

19. In IRPS 99-1, Chapter 2, Section III.B.2 is revised to read as follows:

If the single common bond group that comprises a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This is an event which requires a change to the credit union’s field of membership. NCUA may not permit a single associational credit union to maintain in its field of membership a sold or spun-off group to which it has been providing service unless the group otherwise qualifies for membership in the credit union or the credit union converts to a multiple common bond credit union.

If the group comprising the single common bond of the credit union merges with, or is acquired by, another group, the credit union can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment.

20. In IRPS 99-1, Chapter 2, Section IV.B.4 is revised to read as follows:

If a select group within a federal credit union's field of membership undergoes a substantial restructuring, a change to the credit union's field of membership may be required if the credit union is to continue to provide service to the select group. NCUA permits a multiple common bond credit union to maintain in its field of membership a sold, spun-off, or merged select group to which it has been providing service. This type of amendment to the credit union's charter is not considered an expansion; therefore the criteria relating to adding new groups are not applicable.

When two groups merge and each is in the field of membership of a credit union, then both (or all affected) credit unions can serve the resulting merged group, subject to any existing geographic limitation and without regard to any overlap provisions. However, the credit unions cannot serve the other multiple groups that may be in the field of membership of the other credit union.

21. In IRPS 99-1, Chapter 2, Section V.A.2 is revised to read as follows:

In addition to the documentation requirements set forth in Chapter 1 to charter a credit union, a community credit union applicant must provide additional documentation addressing the proposed area to be served and community service policies.

A community credit union is unique in that it must meet the statutory requirements that the proposed community area is (1) well-defined, and (2) a local community, neighborhood, or rural district.

"Well-defined" means the proposed area has specific geographic boundaries. Geographic boundaries may include a city, township, county (or its political equivalent), or clearly identifiable neighborhood. Although congressional districts or other political boundaries which are subject to occasional change, and state boundaries are well-defined areas, they do not meet the second requirement that the proposed area be a local community, neighborhood, or rural district.

The meaning of local community, neighborhood, or rural district includes a variety of factors. Most prominent is the requirement that the residents of the proposed community area interact or have common interests. In determining interaction and/or common interests, a number of factors become relevant. For example, the existence of a single major trade area, shared governmental or civic facilities, or area newspaper is significant evidence of community interaction and/or common interests. Conversely, numerous trade areas, multiple taxing authorities, and multiple political jurisdictions, tend to diminish the characteristics of a local area.

Population and geographic size are also significant factors in determining whether the area is local in nature. A large population in a small geographic area or a small population in a large geographic area may meet NCUA community chartering requirements. For example, an ethnic neighborhood, a rural area, a city, and a county with 300,000 or less residents will generally have sufficient interaction and/or common interests to meet community charter requirements. While this may most often be true, it does not preclude community charters consisting of multiple counties or local areas with populations of any size from meeting community charter requirements.

Conversely, a larger population in a large geographic area may not meet NCUA community chartering requirements. It is more difficult for a major metropolitan city, a densely populated county, or an area covering multiple counties with significant population to have sufficient interaction and/or common interests, and to therefore demonstrate that these areas meet the requirement of being "local." In such cases, documentation supporting the interaction and/or common interests will be greater than the evidence necessary for a smaller and less densely populated area.

In most cases, the "well-defined local community, neighborhood, or rural district" requirement will be met if (1) the area to be served is in a recognized single political jurisdiction, i.e., a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000, or (2) the area to be served is in multiple contiguous political jurisdictions, i.e. a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000. If the proposed area meets either of these criteria, the credit union must only submit a letter describing how the area meets the standards for community interaction or common interests.

If NCUA does not find sufficient evidence of community interaction or common interests, more detailed documentation will be necessary to support that the proposed area is a well-defined community. The credit union must also provide evidence of the political jurisdiction(s) and population. Evidence of the political jurisdiction(s) should include maps designating the area to be served. One map must be a regional or state map with the proposed community outlined. The other map must outline the proposed community and the identifying geographic characteristics of the surrounding areas.

If the area to be served does not meet the political jurisdiction(s) and population requirements of the preceding paragraph, or if required by NCUA, the application must include documentation to support that it is a well-defined local community, neighborhood, or rural district. It is the applicant's responsibility to demonstrate the relevance of the documentation provided in support of the application. This must be provided in a narrative summary. The narrative summary must explain how the documentation demonstrates interaction or common interests. For example, simply listing newspapers and organizations in the area is not sufficient to demonstrate that the area is a local community, neighborhood, or rural district.

Examples of acceptable documentation may include:

- the defined political jurisdictions;
- major trade areas (shopping patterns and traffic flows);
- shared/common facilities (for example, educational, medical, police and fire protection, school district, water, etc.);
- organizations and clubs within the community area;
- newspapers or other periodicals published for and about the area;
- maps designating the area to be served. One map must be a regional or state map with the proposed community outlined. The other map must outline the proposed community and the identifying geographic characteristics of the surrounding areas;
- common characteristics and background of residents (for example, income, religious beliefs, primary ethnic groups, similarity of occupations, household types, primary age group, etc.); or
- other documentation that demonstrates that the area is a community where individuals have common interests or interact.

A community credit union is frequently more susceptible to competition from other local financial institutions and generally does not have substantial support from any single sponsoring company or association. As a result, a community credit union will often encounter financial and operational factors that differ from an occupational or associational charter. Its diverse membership may require special marketing programs targeted to different segments of the community. For example, the lack of payroll deduction creates special challenges in the development of savings promotional programs and in the collection of loans.

Accordingly, it is essential for the proposed community credit union to develop a detailed and practical business and marketing plan for at least the first two years of operation. The proposed credit union must not only address the documentation requirements set forth in Chapter 1, but also focus on the accomplishment of the unique financial and operational factors of a community charter.

An existing community credit union, and any applicant for a community charter must also specifically address in its business plan, marketing plan or other appropriate separate documentation how the credit union plans to market its products and services to the entire community, including any underserved or low-income areas, if applicable. This may include current or future delivery systems, such as ATMs, 24 hour voice

response system, internet web sites, current or future customized programs to assist community residents such as credit counseling and budgeting, and current or future service facility locations. The community credit union will be expected to review its plan to serve the entire community to determine if the community is being adequately served. The regional director may request periodic service status reports from a community credit union to ensure that the needs of the community are being met.

22. In IRPS 99-1, Chapter 3, Section III is revised to read as follows:

All federal credit unions may include in their fields of membership, without regard to location, communities satisfying the definition for serving underserved areas in the Federal Credit Union Act. More than one federal credit union can serve the same underserved area. The Federal Credit Union Act defines an underserved area as a local community, neighborhood, or rural district that is an "investment area" as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994.

The "well-defined local community, neighborhood, or rural district" requirement will be met if (1) the area to be served is in a recognized single political jurisdiction, i.e., a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000 or (2) the area to be served is in multiple contiguous political jurisdictions, i.e., a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000. If the proposed area meets either of these criteria and meets the definition of an investment area that is underserved, then it is presumed to be a local community, neighborhood, or rural district.

An investment area includes any of the following:

- An area encompassed or located in an Empowerment Zone or Enterprise Community designated under section 1391 or the Internal Revenue Code of 1996 (26 U.S.C. 1391);

- An area where the percentage of the population living in poverty is at least 20 percent;

- An area in a Metropolitan Area where the median family income is at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater;

- An area outside of a Metropolitan Area, where the median family income is at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;

- An area where the unemployment rate is at least 1.5 times the national average;

- An area where the percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent;

- An area located outside of a Metropolitan Area with a county population loss between 1980 and 1990 of at least 10 percent;

In addition, the local community, neighborhood, or rural district must be underserved, based on data considered by the NCUA Board and the Federal banking agencies.

Once an underserved area has been added to a federal credit union's field of membership, the credit union must establish and maintain an office or facility in the community within two years. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted and loans are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM.

If a credit union has a preexisting office within close proximity to the underserved area, then it will not be required to maintain an office or facility within the underserved area. Close proximity will be determined on a case-by-case basis, but the office must be readily accessible to the residents and the distance from the underserved area will not be an impediment to a majority of the residents to transact credit union business.

The federal credit union adding the underserved community must document that the community meets the definition for serving underserved areas in the Federal Credit Union Act. The charter type of a federal credit union adding such a community will not change and therefore the credit union will not be able to receive the benefits afforded to low-income designated credit unions, such as expanded use of non member deposits and access to the Community Development Revolving Loan Program for Credit Unions.

A federal credit union that desires to include an underserved community in its field of membership must first develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository needs of the community and detail how the credit union plans to serve those needs. The credit union will be expected to regularly review the business plan, to determine if the community is being adequately served. The regional director may require periodic service status reports from a credit union about the underserved area to ensure that the needs of the underserved area are being met as well as requiring such reports before NCUA allows a federal credit union to add an additional underserved area.

23. In IRPS 99-1, Chapter 4, Section II is revised to read as follows:

Any state-chartered credit union may apply to convert to a federal credit union. In order to do so it must:

- comply with state law regarding conversion;
- file proof of compliance with NCUA;
- file the required conversion application, proposed federal credit union organization certificate, and other documents with NCUA;
- comply with the requirements of the Federal Credit Union Act, e.g., chartering and reserve requirements; and
- be granted federal share insurance by NCUA.

Conversions are treated the same as any initial application for a federal charter, including mandatory on-site examination by NCUA. NCUA will also consult with the appropriate state authority regarding the credit union's current financial condition, management expertise, and past performance. Since the applicant in a conversion is an ongoing credit union, the economic advisability of granting a charter is more readily determinable than in the case of an initial charter applicant.

A converting state credit union's field of membership must conform to NCUA's chartering policy. The field of membership will be phrased in accordance with NCUA chartering policy. Subsequent changes must conform to NCUA chartering policy in effect at that time. The converting credit union may continue to serve members of record.

If the converting credit union is a multiple group charter and the new federal charter is a multiple group, then the new federal charter may retain in its field of membership any group that the state credit union was serving at the time of conversion. Any subsequent additions or amendments to the credit union's field of membership must comply with federal field of membership policies.

If the converting credit union is a community charter and the new federal charter is community-based, it must meet the community field of membership requirements set forth in Chapter 2, Section V. If the state chartered credit union's community boundary is more expansive than the approved federal boundary, only members of record outside of the new community boundary may continue to be served.

24. In IRPS 99-1, Chapter 4, Section III.A is revised to read as follows:

Any federal credit union may apply to convert to a state credit union. In order to do so, it must:

- notify NCUA prior to commencing the process to convert to a state charter and state the reason(s) for the conversion;

- comply with the requirements of Section 125 of the Federal Credit Union Act that enable it to convert to a state credit union and to cease being a federal credit union; and

- comply with applicable state law and the requirements of the state regulator.

It is important that the credit union provide an accurate disclosure of the reasons for the conversion. These reasons should be stated in specific terms, not as generalities. The federal credit union converting to a state charter remains responsible for the entire operating fee for the year in which it converts.

25. In IRPS 99-1, Chapter 2, the title of Sections II.H, III.H, and IV.F is revised to read as "Other Persons Eligible for Credit Union Membership."

26. In IRPS 99-1, Appendix D, Form 4015EZ is revised to read as follows:

APPLICATION FOR FIELD OF MEMBERSHIP AMENDMENT
NCUA FORM 4015-EZ

USE ONLY FOR EXPANSIONS COVERING
GROUPS OF 500 PERSONS OR LESS

Attach a separate application for each group included in your request for expansion. The application must be complete or it will be returned unprocessed.

1. Name and address of credit union:

_____
_____
_____

2. Name and address of group: _____

_____

_____

(If the group is an association, include a copy of the association's Charter/Bylaws or other equivalent organizational documentation.)

3. Provide the proposed field of membership wording: _____
_____
_____

4. How many primary potential members (excluding immediate family and household members) are in the group: _____

5. Attach a letter, on letterhead stationery if possible, from the group requesting credit union service. This letter must indicate:

- ☐ how the group shares the occupational or associational common bond **(for single common bond additions only)**;
- ☐ that the group wants to be added to the federal credit union's field of membership;
- ☐ the number of persons to be added and the group's location(s); and
- ☐ the group's proximity to the credit union's nearest service facility **(for multiple common bond additions only).**

Name and title of credit union board-authorized representative (e.g., President/CEO):

_____ _____ _____
(Typed/Printed Name) (Signature) (Date)

28. In IRPS 99-1, Appendix D, Form 4015 is revised to read as follows:

APPLICATION FOR FIELD OF MEMBERSHIP AMENDMENT
NCUA FORM 4015

USE ONLY FOR EXPANSIONS COVERING GROUPS OF MORE THAN 500 PERSONS

For expansions covering groups of 500 or less persons -- use the short form application, NCUA 4015-EZ.

Attach a separate application for each group included in your request for expansion. The application must be complete or it will be returned unprocessed.

1. Name and address of credit union:

_____
_____
_____

2. Name and address of the group:

_____
_____

(If the group is an association, include a copy of the association's Charter/Bylaws or other equivalent organizational documentation.)

3. Provide the proposed field of membership wording. Use the example wording found in NCUA's *Chartering and Field of Membership Manual,* Chapter 2:
   - ☐ Section II.A for single occupational common bond groups;
   - ☐ Section III.A for single associational common bond groups; or
   - ☐ Section IV.A for multiple common bond fields of membership.

4. How many primary potential members (excluding immediate family and household members) are in the group: _____

5. (a) For multiple common bond expansions, what is the distance between the group's location and your credit union's nearest service facility[1] to which the group has access (Reference Chapter 2, Section IV.A.1):

_____
_____

(b) What is the address of this service facility:

_____
_____
_____

(c) Describe the service area[2] primarily served by the above service facility:

_____
_____
_____
_____

6. Is the group in the field of membership of <u>any</u> other credit union? Yes___ No___
If yes, and the overlapped credit union is not a community credit union or a non-federally insured credit union, please address the following:

☐ Provide the name and location of the other servicing credit union:

_____
_____
_____

☐ Include a letter from the overlapped credit union indicating whether it concurs or objects to the overlap. If the overlapped credit union objects or fails to respond, document attempts to resolve the issue:

_____
_____

☐ Explain how the expansion's beneficial effect in meeting the convenience and needs of the members of the group clearly outweighs any adverse effect on the overlapped credit union:

_____
_____

[1] **A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed.**

[2] **A federal credit union's service area is the area that can reasonably be served by the service facility accessible to the groups within the field of membership. It will most often coincide with that geographic area primarily served by the service facility.**

7. Attach a letter, on letterhead stationery if possible, from the group requesting credit union service. This letter must indicate:

- ☐ how the group shares the occupational or associational common bond (for single common bond additions only);
- ☐ that the group wants to be added to the federal credit union's field of membership;
- ☐ whether the group presently has other credit union service available;
- ☐ the number of persons currently included within the group to be added and the group's location(s);
- ☐ the group's proximity to the credit union's nearest service facility (for multiple common bond additions only); and
- ☐ why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards (for multiple common bond additions only). *The formation of a separate credit union may not be practical if the group lacks sufficient volunteers or resources to support the operation of a credit union or does not meet the economic advisability criteria outlined in Chapter 1 of NCUA's Chartering and Field of Membership Manual.*

8. Other comments:

_____
_____
_____
_____
_____
_____

Name and title of credit union board-authorized representative (e.g., President/CEO):

_____ _____
(Typed/Printed Name) (Signature) (Date)